



Attorney Docket No. KEYNP005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of )  
ERIC HAMER et al. )  
Application No.: 09/475,765 )  
Filed: December 30, 1999 )  
For: METHOD AND SYSTEM FOR )  
EVALUATING QUALITY OF SERVICE )  
OVER THE INTERNET )

Examiner: PHUOC H. NGUYEN

Art Unit: 2143

**RECEIVED**

APR 30 2003

Technology Center 2100

PATENT

# 1/7-0.  
04/30/03

DECLARATION OF PRIOR INVENTION IN THE UNITED STATES OR IN A NAFTA OR  
WTO MEMBER COUNTRY TO OVERCOME CITED PATENT OR PUBLICATION  
(37 C.F.R. Section 1.131)

Assistant Commissioner for Patents  
Washington, D.C. 20231

**PURPOSE OF DECLARATION**

1. This declaration is to establish completion of the invention in this application in the United States, at a date prior to September 1, 1999, that is the effective date of the prior art patent that was cited by the examiner.

2. The persons making the declaration are the inventors.

## **FACTS AND DOCUMENTARY EVIDENCE**

3. To establish the date of completion of the invention of this application, the following attached documents are submitted as evidence:

A. Pages from a Transaction Perspective Requirements Specification (dated prior to September 1, 1999) (attached hereto as Exhibit A). Section 1 of the Specification provides an overview of the Transaction Perspective system and Section 9 describes features and functions of the system. More specifically, the specification describes the recording and execution of transactions and collection and output of data as set forth in the claims. The specification further describes system architecture, input to transactions, output to the database, and provides data collection examples.

Portions of the Transaction Perspective Requirements Specification which are not applicable to this Declaration and may be considered trade secrets have been redacted.

B. Copy of e-mail sent prior to September 1, 1999 (attached hereto as Exhibit B). The e-mail was sent from Fritz Mueller, Director of Product Marketing at Keynote Systems, Inc. to Keynote customers to notify them of the availability of the Transaction service (described in Exhibit A). As set forth in the e-mail, the Transaction service measures the performance and availability of multi-page interactive transactions on web sites as experienced by users around the world. The e-mail also describes the browser-based recorder and the distribution of recorded transactions to measurement computers which execute the transaction at desired intervals to collect detailed measurement data. As noted in the e-mail, the service was immediately available at the time of distribution of the e-mail.

From these documents, it can be seen that the invention in this application was made and reduced to practice prior to September 1, 1999, which is the effective date of the reference.

## TIME OF PRESENTATION OF THE DECLARATION

This declaration is submitted with the first response after final rejection and is for the purpose of overcoming a new ground of rejection.

## DECLARATION

6. As a person signing below:

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

## SIGNATURES

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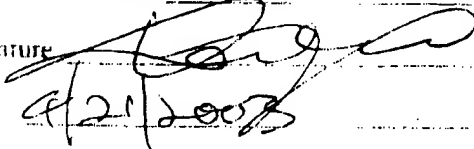
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PAGE 3/6

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